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Federal Communications Commission  
Office of the Secretary

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Tariff Filing Requirements ) CC Docket No. 92-13  
For Interstate Common )  
Carriers )

REPLY COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC"), on behalf of its operating subsidiaries, submits these Reply Comments relating to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above matter.

I. General.

As stated in SBC's initial Comments, SBC believes that the Commission has general and specific statutory authority to forebear and/or to streamline its tariff regulation of providers of communications services under Sections 151, 154(i), and 203(b)(2) of the Communications Act. The Commission has additional forbearance and/or streamlining authority relating to radio communications

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under Sections 303(g) and 303(r). The Commission's authority in this regard is subject to the constitutional limitation that whatever actions taken are applied equally to all providers of the same communications services.<sup>1</sup>

A number of the initial comments concur in SBC's position that the Commission has authority under Section 203(b)(2) to forebear and/or to streamline its tariff regulation under the Communications Act.<sup>2</sup> Additional authority for such action is found by various commentators under Sections 154(i), 203(c), 211(a), and 211(b).<sup>3</sup> Various parties also agree with SBC that the Commission's pro-competitive policies will be furthered only if forbearance and/or streamlined regulation is applied equally to all providers of the same communications services.<sup>4</sup> Finally, it is virtually undisputed, even by AT&T, that the Commission

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<sup>1</sup>*Comments of SBC*, pp. 1-8.

<sup>2</sup>*Comments of GTE*, p. 12; *CTIA*, p. 12; *First Financial Management Corp. ("FFMC")*, pp. 3-4; *Ocom Corp.*, p. 11; *MCI*, pp. 7 & 13; *Ad Hoc Telecommunications Users Group*, p. 7; *Telecommunications Marketing Ass'n.*, p. 4; *SBC*, p. 2, 7-8; *et al.*

<sup>3</sup>*Comments of IBM*, p. 4; *Comptel*, p. 7; *FFMC*, pp. 4-6; *GTE*, pp. 15-16; *Wiltel*, p. 10.

<sup>4</sup>*Comments of Pacific*, pp. 2, 3 & 9; *U S West*, pp. 8-10; *AT&T*, pp. 8-10; *SBC*, pp. 1, 4-5, 11.

has authority to streamline its tariff regulation of communications services.<sup>5</sup>

## II. Reply To MFS.

Metropolitan Fiber Systems ("MFS") asserts that, as a non-dominant carrier, it is subject to the Commission's forbearance policy applicable to such carriers.<sup>6</sup> MFS cites no direct support for this argument, and the argument is factually incorrect.

The *Competitive Carrier* decisions and the *Mobile Radio Service* decisions which adopted forbearance regulation did not grant forbearance to MFS. Nor could they because at the time of their issuance MFS and other alternate local carriers did not exist.

The forbearance adopted in the *Competitive Carrier* proceeding was specifically limited in scope to "interstate, domestic, interexchange telecommunications services."

(Emphasis added.) Services which were "exchange in nature" were excluded from forbearance.<sup>7</sup> As for the regulation of

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<sup>5</sup>*Comments of AT&T*, pp. 8-10; *Locate*, pp. 8-9; *ACC Long Distance Corp.*, p. 6; *Communications Transmission Inc.*, pp. 1, 4, 6-7.

<sup>6</sup>*MFS Comments*, p. 3.

<sup>7</sup>*Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorization Therefore*, 77 F.C.C. 2d 308 (1979), *Notice of Inquiry and Proposed Rulemaking* at 319, n.15; *Fourth Report and Order* at p. 557; *Preempting of State Entry Regulation in The Public Land Mobile Service*, 59 RAD. REG. 2d (P&F) 1518 (1986), paras. 1 & 33.

exchange services, the *Fifth Report and Order* expressly stated that "dominant regulation applies to inter alia . . . exchange services of carriers . . . ." <sup>8</sup> (Emphasis added.)

Since MFS is a common carrier provider of exchange services, the plain language of the *Fifth Report and Order* regarding dominant regulation clearly applies to MFS. MFS can cite no order or decision which either specifically or lawfully exempts it from such regulation.

MFS attempts to rebut this fact claiming that it is a specialized common carrier providing "terrestrial voice and data services." <sup>9</sup> Again, MFS cites no decision which has determined its status as a specialized common carrier, and there is none.

In any event, if the Commission agrees with MFS' self-classification, then as a matter of law it should apply the same classification and regulation immediately to all other providers of terrestrial voice and data services (including local exchange carriers) who compete in the same market as MFS. <sup>10</sup> To do otherwise would not promote competition, it would only grant MFS an unreasonable and unlawful regulatory preference. <sup>11</sup>

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<sup>8</sup>*Fifth Report and Order* at 1204, n.41.

<sup>9</sup>*Comments of MFS*, p. 3, n.2, para. 2.

<sup>10</sup>*U.S. Const. Amend. v.*

<sup>11</sup>*Comments of SBC*, pp. 4-5 and cases cited therein.

Moreover, MFS essentially admits that it is seeking preferential treatment and that it does not intend to compete in a manner that will actually drive prices toward service costs as happens in a competitive market. In fact, MFS suggests that, if it is required to file tariffs, it may wish to define its rate as a specific percentage of the dominant carrier's rate for a comparable service, and thus to mirror such a rate without having to file a new tariff every time the other carrier changes a rate element.<sup>12</sup>

Under the scenario suggested by MFS, true price competition will not result as anticipated by the Commission's *Competitive Carrier* decisions.<sup>13</sup> To the contrary, rather than drive prices towards competitive service costs, the MFS proposal would give it a clear incentive to use the tariff process to keep the comparable local exchange company prices inflexible and as high as possible. Such a strategy would allow MFS to increase its profits and to maintain its own prices at a higher level than in a truly competitive market environment. The Commission should reject this obvious proposal to use unequal forbearance regulation and the dominant/non-dominant

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<sup>12</sup>*MFS Comments*, p. 18, n.12.

<sup>13</sup>See *Notice of Inquiry and Proposed Rulemaking* at pp. 316-317.

carrier distinction as a method for artificially influencing and restricting price competition in the relevant exchange service market.

### III. Streamlined Regulation.

Several of the comments suggest alternative forms of regulation to be adopted if the Commission determines that forbearance regulation should be eliminated.<sup>14</sup> While SBC believes that the Commission has authority to engage in forbearance tariff regulation, it further believes that, in the event that the Commission disagrees, a grant of maximum streamlined regulation for all providers of the same services is still warranted.

No one seriously disputes that the Commission has authority to streamline tariff regulation. And streamline, it should. The provisions of Title II, including the tariff provisions of Section 203, were written to regulate common carrier service in a non-competitive environment as a surrogate for natural market forces that would otherwise safeguard that market. The Commission has recognized in the *Competitive Carrier* proceeding and more recently in CC Docket No. 90-132 that less aggressive application of Title II regulation is required in markets where competition

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<sup>14</sup>See, e.g., *Comments of CTI*, pp. 1, 4, 6, 7; *AT&T*, pp. 8-10; *ACC*, p. 6; *Wiltel*, p. 11.

exists. This includes the exchange service market.

Unfortunately, the Commission has thus far actually impeded competition in the interexchange market by utilizing a dominant/non-dominant carrier structure to relieve only certain common carriers from the provisions of Title II. The classification of a carrier as non-dominant does not necessarily mean that such a carrier will conduct itself in a manner consistent with the Communications Act,<sup>15</sup> or that true competition will result. Indeed, MFS' comments on its proposal for the exchange market provide stark evidence to that effect. See discussion, *supra*, p.5.

The far better course would be for the Commission to abandon the dominant/non-dominant structure in favor of streamlining tariff regulation for all participants in a particular market. Streamlining could and should be extended for the current rules of cost support, filing intervals, access rate structures, and generally available rate averaging requirements, among others.<sup>16</sup> This type of

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<sup>15</sup>See generally, "Should the Distinction Between Dominant and Non-Dominant Firms Be Removed? - The Case For Removal," Paper by John Haring, National Economic Research Associates, Inc. and Dennis Weisman, University of Florida/Southwestern Bell Corporation. A copy was attached to Pacific Telesis' Comments in this Docket.

<sup>16</sup>For a more detailed discussion of these principles, see Comments and Reply Comments of Southwestern Bell Telephone Company, CC Docket No. 91-141, Appendix E to Reply Comments.

streamlined regulatory structure would promote the interests of the public, while at the same time allowing true competition to be furthered in a timely, natural manner. Whatever the Commission's decision with respect to forbearance of tariff filing requirements, it should adopt streamlined tariff regulation for communications services, and apply those streamlined rules to all providers of the same communications services.

#### IV. Conclusion.

The comments in this case demonstrate that the Commission has authority to forebear and/or to streamline its tariff regulation of all providers of communications services. Such authority includes forbearance of the Section 203 tariff filing requirements.

Even if the Commission decides not to forebear from Title II tariffing for providers of wireline communications services, it should continue to forebear from such tariffing for providers of radio communications.<sup>17</sup> For providers of wireline communications services, the Commission should at the very least grant maximum streamlined tariff regulation. Whatever approach the Commission adopts, the approach should and must be equally

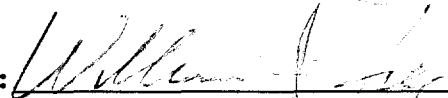
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<sup>17</sup>Such forbearance is not seriously in dispute in this Docket and, as stated in SBC's initial Comments, can be granted under Title III as well as Title II. *Comments of SBC*, pp. 1-8.




applicable to all providers of the same communications services.

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CERTIFICATE OF SERVICE

I, Martha R. Kiely, hereby certify that copies of the foregoing Reply Comments of Southwestern Bell Corporation have been served by first class United States mail, postage prepaid, on the parties listed on the attached.

  
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